



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

April 4, 2013

Memorandum for: Deputy Commissioner, Trials
Re: **Police Officer Pedro Serrano**
Tax Registry No. 935725
40th Precinct
Disciplinary Case No. 2011-5852

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on February 1, 2013 and was charged with the following:

DISCIPLINARY CASE NO. 2011-5852

1. Said Police Officer Pedro Serrano, while assigned to the 40 Precinct, on or about and between April 15, 2010 and April 25, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on two (2) occasions assisted in the prevention of the processing and adjudication of two (2) summonses issued to two (2) motorists. (As amended)

P.G. 203-10, Page 1, Paragraph 5

**PROHIBITED CONDUCT
GENERAL REGULATIONS**

In a Memorandum dated March 4, 2013, Deputy Commissioner Martin G. Karopkin found the Respondent Guilty of Specification No. 1 in Disciplinary Case No. 2011-5852. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Police Officer Serrano's misconduct warrants the forfeiture of five (5) suspension days to be served, twenty-five (25) vacation days, a total of thirty (30) penalty days and one (1) year dismissal probation, as a disciplinary penalty.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

March 4, 2013

MEMORANDUM FOR: Police Commissioner

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40 Precinct
Disciplinary Case No. 2011-5852

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P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
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The Department was represented by Michelle Alleyne, Esq., and Vivian Joo, Esq. Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charge and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a 9-year uniformed member of the service, is currently on Full duty status and assigned to the 40 Precinct, where he has worked for the past eight and a half years. Respondent testified that he is assigned to regular uniform patrol and during the course of his career he has made approximately 90 arrests.

Respondent acknowledged that on April 15, 2010, he was assigned to the 40 Precinct and was performing summons overtime, writing summonses. Respondent further acknowledged that on this date he had issued a summons to Person A. Respondent testified that he had observed Person A driving with a cell phone up to his head and talking as his car was moving. Respondent pulled Person A over, asked for his license, registration, and insurance and then issued him a summons for driving while using a cell phone. Respondent stated that Person A had given him, along with the other paperwork, an old Patrolmen's Benevolent Association (PBA) card that was approximately "two three years old."

Respondent testified that shortly thereafter he received a call from his PBA delegate who advised Respondent that Person A was a brother of a New York City Police Department sergeant. Respondent stated that the delegate "needed me to not submit the summons, so I didn't." Respondent further stated that at the time he thought he could use his discretion, so he "didn't submit it. I didn't put it in the box I didn't give it to anybody. It was still in my possession." Respondent testified that there are times, as a

police officer, you have the powers of discretion. Respondent stated, "And at this point they told me it was a sergeant. I didn't want to be on anybody's bad side, and also a fellow officer asked me, so I just didn't submit it." Respondent did not think at the time he did anything wrong by showing that discretion and he stated, "No, not at all."

Respondent further stated that, "They tell you in the Police Academy, they teach you. You have the power of discretion. You can give a summons and you cannot give a summons." Respondent did not think that he could not refrain from handing in the summons at the time. Respondent stated, "Because if you write one and if you make an error, you're not submitting it. You'll write another one probably, but you don't submit it."

Respondent testified that when he finishes writing a summons they go in a box near the desk and he stated, "We place it in there and then we walk away, and it goes through a process." Respondent testified that in this case the summons never made it in the box and he "definitely" did not have to take it out of the box. Respondent further testified that the discretion that he believed he had was mostly for summonses, but he stated that, "If there's a crime I make an arrest no matter what." Respondent acknowledged that he simply just did not submit the summons and he further acknowledged that he never met the sergeant on whose behalf he did this.

On April 25, 2010, Respondent was off-duty and with his wife, Person B (who at the time was his fiancée) and she was driving northeast on the Bruckner (Expressway) headed towards Co-op City. Respondent was sitting in the passenger seat. Respondent testified that they had an appointment so he told Person B to get off of the exit that was located on the right side. Respondent stated that they were in

the slow right lane and she missed the exit, so he told Person B to pull over in the shoulder. Respondent testified that he told Person B to switch seats, because he wanted to drive and back up out of there, but v refused and wanted to drive. Respondent stated that Person B backed up and shortly after, "maybe one-two car lengths there was an unmarked highway officer there in a white unmarked car." Respondent testified that when he saw "his lights go on" he told Person B to pull over, roll down her window and get her paperwork ready.

Respondent testified that when the officer was approaching he observed his face and saw that the officer was angry. At this point, Respondent stated that he had advised Person B, "Do not say nothing to him....all you have to do is say I'm sorry, give him your paperwork, and do not cause a fuss." Respondent stated that Person B understood and that he then put his "ID" on top of her paperwork and he handed it to her. Respondent testified that Person B gave the officer the items and said "I'm sorry." Respondent testified that the officer began to curse and said, "Are you fucking kidding me? This is unfuckin believable. This is bullshit." Respondent further stated that the officer also said the words somewhere in there, "You fuckin people" and that the officer had mentioned that comment twice. Respondent testified that he was "a little worried" where the officer was trying to go with this and even Person B herself looked at Respondent as if to say, "What's wrong with this guy?" Respondent stated he was "ashamed" because this was an "NYPD officer who represents me and I never act that way with someone. I treat them with respect."

Respondent testified that he did not know what the officer's problem was, but that he was angry and kept cursing and yelling. Respondent further testified that it was

traumatic at the time for him, he was angry and Person B was starting to change colors because she was being belittled by his co-worker. After the officer walked back to his car Respondent told Person B not to say anything to him and that, "We're going to try to work this out later." Respondent testified that he "never" got out of the car during the encounter to speak with the officer. Respondent stated, "Unfortunately, he is a police officer in uniform and I'm not. I'm off-duty. I know better, don't get out of that car, don't say anything. I'm a Hispanic man in a car and he is a white officer and he's extremely angry. And in my opinion at the time he was spitting out racial slurs." Respondent stated that right before the officer went back to his car he looked at Respondent's ID and threw it into the car hitting Person B, leaving the Respondent "in shock." Respondent stated that Person B went from "happy to scared to sad to angry" and they just endured the car stop. Respondent stated that the officer returned and gave them a summons and Respondent further stated that he was "upset I got a summons."

Respondent testified that as they drove away, maybe within five minutes, he called his "PBA rep." Respondent did not recall exactly which rep he called but he explained what had happened. Person B wanted to make a complaint against the officer and Respondent immediately advised her not to do this. Respondent stated that "We officers don't make complaints. We first talk to our rep and they figure out what really happened."

Respondent testified that if an on-duty officer had done something inappropriate you can respond in one of three ways and he stated that, "I prefer the last one. The first one is you can call IAB if it's serious, you can make a CCRB (Civilian Complaint Review Board) complaint, or you can call your rep. I chose to call my rep, and let them

figure out what really happened.” Respondent testified that in doing so, he was hoping to speak to the officer to find out whether he had a bad day and what his problem was, before Person B made a complaint and they made this something official. Respondent spoke to his PBA delegate and advised him that he wanted to speak to the officer in person, but the delegate told him “No...Don’t speak to him, let me handle it,” so Respondent put it in his hands.

Respondent acknowledged that he was angry but denied that he wanted to have a physical confrontation with the officer. Respondent stated, “I’m an officer. I’m not going to commit a crime just because someone gave me a summons.” Respondent further acknowledged that within five minutes after the encounter, he called his PBA delegate (Police Officer Louis Rodriguez) and advised him of what had happened. When Respondent was asked if at some point he was told that the summons was taken care of and that the highway officer was not going to submit it, Respondent stated, “Towards the end. I kept pushing the fact that I wanted to speak to him. And my PBA delegate said, no, no, we’re going to handle this. And they took care of it the way they normally did, and they didn’t let me speak to him.” Respondent acknowledged that he never spoke to the officer and that neither he nor Person B ever had to pay the summons. Respondent testified that he never saw the officer and he thought the delegate made the right call in not letting him speak to the officer, because the officer could have “made allegations or something” later on. Respondent acknowledged that the advice he had received from the delegate in not doing a “face-to-face” had been good.

Respondent acknowledged that he has accepted responsibility for being involved in two separate summonses within a ten day period. Respondent, in mitigating this case,

stated, "I'm not saying that I'm 100 innocent, but I think that the punishment is too severe. I wasn't trying to fix a summons. The first one I was just listening to a PBA rep who said, hey, help me out, I helped him out. And the second one was originally just to mediate a confrontation between my wife and her. I also was involved, but that was my main concern. It ended up that it got fixed, but, you know, that wasn't my primary intention." Respondent acknowledged that the suspension part of the penalty is a big deal because he has a child in college and another who aspires to become a New York City Police Officer and he stated, "To have a suspension on my record to show him, my son." Respondent testified that he has four children and the youngest is a newborn and he stated, "Well, when you have four kids you need all the vacation days that you can."

On cross-examination, Respondent acknowledged that on April 15, 2010, when he issued a summons to Person A, that Person A had given him an old PBA card that was expired. Respondent further acknowledged, that at the time, he decided not to exercise professional courtesy because he saw the expired card. Respondent stated that he "didn't think so", when asked if courtesy is usually extended prior to the actual issuance of a summons. Respondent acknowledged writing a summons to Person A but he did not bring the summons back to the command. Respondent testified that he was still driving around when he received the call, so he did not submit the summons. Respondent testified that in 2010, there were maybe three or four copies with a summons, and that one of the copies would be given to the actual violator or motorist. Respondent testified that he gave a copy of the summons to Person A and he himself kept the remaining copies. Respondent acknowledged that this was not the first summons he had written in his nine years and he stated, "No, I've written plenty." Respondent further acknowledged

knowing that when summonses are written they are supposed to be turned in at the command. Respondent acknowledged once again that this was a situation where he had written and issued the summons, but decided not to turn it in. Respondent acknowledged receiving a phone call from a delegate, Officer (Virgilio) Bencosme, who had asked that Respondent not do it and Respondent complied. Respondent further acknowledged that the summons was never processed and that Person A never had to pay the fine.

Respondent acknowledged that on April 25, 2010, he and Person B were stopped for the violation of backing up on a highway. Respondent further acknowledged that their interaction with the officer upset Person B and his primary reason in reaching out to Rodriguez was to complain about the treatment by that officer. Respondent, when asked if he had any intention of trying to get that ticket taken care of and he stated, "That would be a secondary reason. Primarily, it was just – imagine you're sitting next to me and the police officer yells at you. I mean, that was my reason. My primary reason." When Respondent was asked again, if one of his reasons was to make sure that the ticket was taken care of so Person B would not have to pay, he stated, "It eventually ended that way, yes."

Respondent acknowledged that he is overheard on the wiretap essentially saying, "Hopefully," the ticket will be taken care of (Respondent's Exhibit (RX) A is a transcript of that conversation and RX B is an audio recording of the conversation). Respondent further acknowledged that the ticket was taken care of. Respondent agreed that he was surprised that the ticket was issued at all because he had presented his identification and he expected courtesy at that time. Respondent acknowledged that by courtesy he expected that in showing his identification, the officer would stop from actually writing a

summons to begin with. Respondent disagreed that professional courtesy is using your discretion before issuing a ticket. Respondent testified that he never used a summons voidance form but he is now aware of what a summons voidance form is. Respondent stated that a summons voidance form is, "If you have a summons and there's a problem with it, something is wrong with the summons, you fill it out and then I guess you hand it to someone, and then it officially gets voided." Respondent acknowledged that this is what happens after a summons has been issued in error, but stated, "There's other reasons why they get voided." Respondent further acknowledged that these are summonses that have been actually issued and distributed to a person. Respondent agreed that he never filled out a summons voidance form on April 15, 2010, for Person A.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent is charged with, in essence, "fixing" two summonses. In each instance he claims that the facts offer some mitigation.

The first instance involves a summons he had issued to someone for talking on a cell phone while driving. He received a call shortly thereafter from a union delegate on a phone that was the subject of a wiretap. Respondent was asked not to process the summons. Respondent, who had not placed the summons in the summons box in the

precinct, simply held the summons and treated it as though it had been issued by mistake. It was not submitted for processing.

Respondent argues that this is materially different from other summons cases in that he did not remove it from a summons box or cause it to be removed from a summons box, nor did he otherwise interfere with the processing of the summons as for instance, one attorney put in another case, by “hav[ing] a convenient loss of memory” in court.

The Department does not argue that had Respondent decided on the scene not to give the motorist a summons that would have been an acceptable use of discretion. It does take the position that once the summons had been issued it, in effect, could not be recalled. Respondent by his plea of guilty accepts the Department’s argument that he interfered with the processing of the summons but obviously the conduct is more marginal than other cases seen so far.

More significant is the second summons. In that case Respondent was heard on a wiretapped phone calling a delegate to complain about a summons his fiancée (Person B) had just received. A digital recording and transcript of that conversation are in evidence (RX B and RX A, respectively).

As a result of that call the summons was “fixed”; however, a careful review of that call indicates that, as Respondent testified, the call was a complaint about the issuing officer and not a request to fix the summons.

In the call Respondent was upset about two things. The first was a complaint that the issuing officer did not extend a courtesy to him. The second was that he and the fiancée were subject to verbal abuse which he felt was based on his ethnicity.

Respondent has acknowledged that he wanted the summons quashed but he never asked for that. To the extent that any conversation was had regarding “fixing” that summons it was initiated by the delegate.

During the proceeding in this matter some discussion was held on this issue. The Assistant Department Advocate (Advocate) claimed that the discussion of fixing the summons began near the outset of the conversation when Respondent used the word “business” to describe his having received a summons. I find nothing about the use of that word to suggest ticket fixing.

The Advocate also cited to the fact that the delegate asked for the name of the officer, his tax number and the summons number. All of this is near the end of the conversation. The request for the officer’s name and tax number is consistent with any effort to address the issue of an officer who was disrespectful. The summons number of course is related to the ticket fixing but again this occurs near the very end of the conversation and again it is a question asked by the delegate and not anything that Respondent initiated.

Having considered the Advocate’s argument and having reviewed the audio recording, it is my conclusion that the principal reason for the call was to complain about mistreatment by a fellow officer. As noted the summons issue did not come up until the end of the conversation and was not raised by Respondent. The delegate said he would take care of the summons and Respondent thanks him.

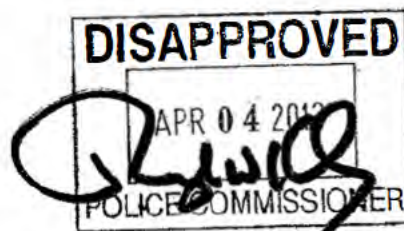
While I have rejected other claims of mitigation in similar cases this one is different as the mitigating factor goes to the very nature and purpose of the interaction in the wiretapped telephone conversation.

Additionally Respondent testified credibly that he did not confront the officer who issued the summons at the time the summons was issued. He noted during his testimony that he was an off-duty officer dealing with a uniformed on-duty officer. Corroboration for this is found in the audio recording where he is chided for not saying anything to the officer on the scene. I have seen the result of such confrontations in other disciplinary actions. Not only can they be dangerous but they undermine core principles of the Department's paramilitary structure. His behavior at the time the summons was issued is worthy of note.

These mitigating factors justify a penalty that is somewhat less than others in this series of cases. It is therefore recommended that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. In addition Respondent should forfeit twenty-five (25) vacation days.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner Trials



From: Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PEDRO SERRANO
TAX REGISTRY NO. 935725
DISCIPLINARY CASE NO. 2011-5852

For your consideration.


Martin G. Karoplán
Deputy Commissioner Trials